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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1971

No. 70-180

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, *Petitioner,*

vs.

UNITED STATES OF AMERICA, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF OF BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

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OPINION BELOW

The opinion of the Court of Appeals (Pet. App. i-iii) is reported, 438 F.2d 1213 (1971).

INTRODUCTION

Bank of America presents this Reply Brief in answer to the arguments set forth by the United States.*

ARGUMENT

1. RESPONDENT MISCONSTRUES THE QUESTION PRESENTED

Respondent argues (R.B. 2) that the question presented is:

> "Whether the United States may recover the value of Treasury checks paid upon the forged endorsements of the payee from a presenting bank, where government employees were responsible for the forgeries."

Petitioner contends, and the Court of Appeals agrees, that the question presented is whether the recited circumstances present a situation of legal forgery, or whether the indorsements are effective. Pet. 2; Pet. App. i, ii; *see* Uniform Commercial Code §3-405(1)(c).

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2. THE TREASURY REGULATIONS RELIED UPON BY RESPONDENT DO NOT APPLY

The United States has set forth the argument that the Treasury Regulations cited (31 C.F.R. §§360.4 and 360.5, the latter such section being promulgated subsequent to the events giving rise to the instant

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erratum: The fourth paragraph on page 6 of the Petition should read, "The trial court sitting *without* a jury had jurisdiction under 28 U.S.C.A. §1345."

action) evidence a federal rule of law inconsistent with the rule established by U.C.C. §3-405(1)(c). Bank of America contends that such an assertion merely begs the question.

31 C.F.R. §§360.4 and 360.5 do no more than provide that a presenting bank is deemed to guarantee prior indorsements, and that the Treasurer may demand refund of the amount of a check paid on a forged indorsement from the presenting bank. R.B. 2, 3. These regulations do not reach the question of whether indorsements in padded payroll cases are forgeries.

Under state law there is a similar right of recourse against previous indorsers and the collecting and presenting banks. Under U.C.C. §§3-417 and 4-207 indorsers, collecting and presenting banks are required to warrant to their transferee that they have good title to the instrument presented and that all signatures are genuine or authorized. This is essentially what the cited Treasury Regulations provide. Thus, the state law merchant is in complete accord with the Treasury Regulations.

Notwithstanding the warranty as to genuineness of indorsements which is required under U.C.C. §§3-417 and 4-207 (and under 31 C.F.R. §§360.4 and 360.5), the general law merchant, as codified throughout the state jurisdictions, provides that any signature in the name of the named payee in the circumstances found here is "effective." U.C.C. 3-405(1)(c). In the case of such an indorsement, *as a matter of law the signature cannot be a forgery, no matter who signs the name*

of the payee. Since this latter rule is neither codified by Treasury Regulation, nor is it negatived by a contrary regulation, recourse still must be had to the federal law merchant. It remains for this Court to fashion the governing rules.

CONCLUSION

For the reasons set forth herein and in Bank of America's Petition, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

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Dated, September 28, 1971.